

# FAX COVER SHEET

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**To:** c/o Renata Hesse, Trial Attorney

**Date:** Sun Jan 27 21:39:18 CST 2002

**Pages (including cover):** 4

**From:** Rick Volland

**Comments:** Please oppose the proposed settlement in United States v. Microsoft Corporation.

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January 27, 2002

Renata Hesse, Trial Attorney  
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Dear Renata Hesse,

Thank you for this opportunity to comment on the United States v. Microsoft Corporation; Revised Proposed Final Judgement and Competitive Impact Statement. I write as an advanced user. I am not a programmer, but I rely on computers for my work and am very much concerned about preserving diversity, choice, and quality in computer software.

I am concerned about the power of Microsoft to coerce its competition. Microsoft paid money to both Corel and Apple when each company was desperate and Microsoft could control the terms. I am also concerned that Microsoft forces computer manufacturers to bundle Microsoft applications with the result that computer buyers now assume that Microsoft applications are part of Windows and are included at no cost. The settlement proposed by the Department of Justice would not cover either of these situations even though they are clear examples of the power of Microsoft to coerce its competitors into less competitive postures.

In Apple Computer's 10K annual report for the fiscal year ended September 30, 2000 is the statement of an agreement between Apple Computer and Microsoft. "Microsoft purchased 150,000 shares of Apple...preferred stock...for \$150 million [p. 52]. Apple in turn agreed to limit computer production, and thus competed less against Microsoft.

In August 1997, the Company and Microsoft Corporation entered into patent cross licensing and technology agreements. In addition, for a period of five years from August 1997, and *subject to certain limitations related to the number of Macintosh computers sold by the Company*, Microsoft will make future versions of its Microsoft Office and Internet Explorer products for the Mac OS. Although Microsoft has announced its intention to do so, these agreements do not require Microsoft to produce future versions of its products that are optimized to run on Mac OS X. The Company will bundle the Internet Explorer product with Mac OS system software releases and make that product the default Internet browser for such Mac OS releases. [p. 24, "SUPPORT FROM THIRD-PARTY SOFTWARE DEVELOPERS," emphasis added]

The same document discusses Apple Computer's continued dependence on CPU chips from Motorola [INVENTORY AND SUPPLY, pp. 22-23]. Apple Computer's new operating system, now known as Mac OS X, derives from Nextstep and Openstep purchased with NeXT, Inc. Both Nextstep and Openstep run well on CPU chips by Intel or Motorola. I am writing this letter on an Intel PC running Openstep 4.2. Even the bridging version between Openstep and Mac OS X (a developer-only release known as Rhapsody) ran on both Intel and Motorola CPU chips.

This cross-platform technology would have left Apple Computer far more flexible and competitive as Motorola continues to have manufacturing problems that leave Apple Computer with more marketing problems (the megahertz gap) and a more hazy future. Motorola chips currently cannot achieve the same clock speeds (megahertz) as CPU chips from Intel, AMD, etc. Consumers often choose computers on the basis of clock speeds, so they tend to discount Apple computers even though the Motorola chips accomplish more work than Intel chips for the same clock speed (the megahertz myth). Apple Computer has been aware of this situation for several years.

The statement that Apple Computer agreed to limit its production is not about Apple limiting its production of the Apple computers using Motorola chips. Apple agreed at that time to stop development of Mac OS X for Intel which would have been a far more serious competitor to Microsoft. A consumer could buy an inexpensive PC and replace the Windows operating system with Mac OS X for Intel. Mac OS X is derived from Unix and is known for great stability. Also, Mac OS X has special software development tools that would attract developers because individuals could compete aggressively with far larger software corporations. Mac OS X for Intel would have allowed Apple Computer to move from selling hardware (Macintosh Computers) and proceed to selling software only (Mac OS X) in the same way as NeXT, Inc. moved from selling hardware and software to selling software only. The investment by Microsoft in Apple was incidental. Apple Computer's real concern was that Microsoft threatened to cease development of Microsoft Office for Macintosh, leaving Apple Computer without a strong word processor and office suite. In return, Apple Computer agreed to make Microsoft Internet Explorer the default web browser, instead of Netscape. Macintosh computers don't use Windows, but they largely still depend on Microsoft Office, and Microsoft maintains a hold. Microsoft played one rival (Apple Computer) against Netscape, another rival.

In press release dated October 2, 2000, Corel, Inc. announced that Microsoft agrees to buy 24 million shares of Corel preferred stock at US \$135 million. Corel now owns and develops WordPerfect, a competitor to Microsoft Word. WordPerfect was once a dominant word processor, but is now far in the minority. The DOJ Microsoft trial included evidence that Microsoft shipped flawed versions of the Windows 95 operating system to WordPerfect developers in order to leave WordPerfect a flawed product that could not easily compete with Microsoft Word. Also, Microsoft cultivates bundling agreements where PC manufacturers include Microsoft Word and other components of Microsoft Office with Windows computers so that consumers do not even think of purchasing WordPerfect. Then, when they upgrade their software, they continue to purchase Microsoft Word and do not consider WordPerfect. This agreement with Corel, has Microsoft offering .NET,

a sort of networking server technology, to Corel. It is interesting that Corel now offers all its graphics products in versions optimized for the new Mac OS X, and advertises its cooperation with Apple. At the same time, it has ceased development of WordPerfect for Macintosh. WordPerfect for Linux exists and could be easily ported to the new Unix-based Mac OS X. This agreement between Microsoft and Corel looks like an agreement to dissuade Corel from continuing to compete aggressively with Microsoft Word. Isn't perception an important part of this case?

Microsoft bundles many small applications with Windows that leave fewer opportunities for third-party competitors. Windows now includes image editing software that took away opportunities from Kodak. Kodak negotiated some new opportunities. Kodak now offers little support for Macintosh computers. The larger number of Windows computers is not a true measure of the market here. A large proportion of the images on the Internet were created with Macintosh computers. The graphics and desktop publishing industries still rely heavily on Macintosh computers, yet Kodak digital cameras offer far less support for Macintosh computers than for Windows computers.

Microsoft is now offering very inexpensive versions of its software to schools at prices far below even academic prices. Here at the University of Wisconsin-Madison, Microsoft Office is available at \$25-30 for a fully functional suite, and Microsoft Windows 2000 at a similar price. In return, Microsoft often pressures schools to replace their server software with Microsoft products. These prices are attractive because they offer a product students want at an attractive price, but they leave server operators subject to pressures unrelated to product quality. Also, end users may find themselves with fewer opportunities because Microsoft server products do not interoperate well with non-Microsoft products. Microsoft has a history of adopting Internet standards and then releasing an "enhanced" version that only works with Windows computers. By the way, the DoJ uses an opensource product (OpenBSD) downloaded from Canada ([www.openbsd.org](http://www.openbsd.org)) for its most sensitive communications that require the ultimate in security.

The proposed agreement (final judgement) between the US Department of Justice and Microsoft does not provide protections for Apple Computer or for developers of Linux and other opensource software (e.g., FreeBSD) that would compete with Microsoft products. Linux, FreeBSD, and Hewlett-Packard servers would face unfair competition as I describe in the previous paragraph. The DoJ proposal does not address these concerns.

Please separate the Microsoft operating system and application (e.g., Word) divisions. Thus, I favor a breakup of Microsoft into at least two parts.

Thank you for your time and consideration.

Sincerely,

Rick Volland